



STATE MINING AND GEOLOGY BOARD

EXECUTIVE OFFICER'S REPORT

For Meeting Date: September 13, 2012

Agenda Item No. 5: Assumption Consideration Following Issuance of a 45-Day Notice to Correct Deficiencies to the County of Colusa Pursuant to the Surface Mining and Reclamation Act (SMARA).

INTRODUCTION: At its May 10, 2012, regular business meeting, the State Mining and Geology Board (SMGB), based on the May 2012 Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) Report on Colusa County, moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County of Colusa (County) pursuant to Public Resources Code (PRC) Section 277.4(a). The Notice was issued on May 16, 2012, and a response from the County was received on July 6, 2012. The SMGB will consider, based on the response received from the County, whether the SMGB will assume any or all of the powers of the County under the Surface Mining and Reclamation Act (SMARA), with exception to permitting.

STATUTORY AUTHORITY: Public Resources Code (PRC) Sections 2774.4(a) and (b) provide criteria to the SMGB when considering assumption, or restoration, of certain SMARA powers of a lead agency. Specifically, PRC Section 2774.4(a) states that if certain deficiencies exist, the SMGB can assume certain SMARA lead agency responsibilities as follows:

“If the board finds that a lead agency either has (1) approved reclamation plans or financial assurances which are not consistent with this chapter, (2) failed to inspect or cause the inspection of surface mining operations as required by this chapter, (3) failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by this chapter, (4) failed to take appropriate enforcement actions as required by this chapter, (5) intentionally misrepresented the results of inspections required under this chapter, or (6) failed to submit information to the department as required by this chapter, the board shall exercise any of the powers of that lead agency under this chapter, except for permitting authority.”

Public Resources Code Sections 2774.4(c) provides criteria the SMGB considers should it determine to issue a 45-Day Notice to Correct Deficiencies, and states:

“(c) Before taking any action pursuant to subdivision (a), the board shall first notify the lead agency of the identified deficiencies, and allow the lead agency 45 days to correct the deficiencies to the satisfaction of the



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board. If the lead agency has not corrected the deficiencies to the satisfaction of the board within the 45-day period, the board shall hold a public hearing within the lead agency's area of jurisdiction, upon a 45-day written notice given to the public in at least one newspaper of general circulation within the city or county, and directly mailed to the lead agency and to all surface mining operators within the lead agency's jurisdiction who have submitted reports as required by Section 2207."

BACKGROUND: California is the only state in the conterminous United States where surface mine reclamation is not regulated at the state level. Most states also maintain permitting authority when it comes to mining regulation; whereas, in California permitting authority is decided at the local level. SMARA pursuant to PRC Section 2728 defines a lead agency as a city, county, San Francisco Bay Conservation and Development Commission (BCDC), or the SMGB which has the principal responsibility for approving a surface mining operation or reclamation plan. Under the California Surface Mining and Reclamation Act of 1975 (SMARA), there are currently 113 lead agencies: 52 counties, 50 cities, and the SMGB.

In 2007, the SMGB published Information Report IR 2006-07 titled "*Report on SMARA Lead Agency Performance Regarding Mine Reclamation.*" This evaluation assessed the lead agency's performance of periodic mine inspections, adjustment of annual financial assurances and enforcement of the preparation of Interim Management Plans should a surface mine site be characterized as idle for a period exceeding one year. Based on this review, the overall performance of SMARA lead agencies was found to significantly vary throughout the state. For the most part, overall performance was found to be poor, reflecting a number of factors including primarily financial constraints, limited or lack of internal technical expertise, and overall low priority. As of March 2011, LART commenced review of 18 SMARA lead agencies.

At its May 10, 2012, regular business meeting, the State Mining and Geology Board (SMGB), based on the May 2012 Office of Mine Reclamation (OMR) Lead Agency Review Team (LART) Report on Colusa County, moved to issue a 45-Day Notice to Correct Deficiencies (Notice) to the County of Colusa (County) pursuant to Public Resources Code (PRC) Section 277.4(a). The Notice was issued on May 16, 2012, and a response from the County was received on July 6, 2012.

County of Colusa SMARA Program: Fourteen surface mining operations were reported to exist within the jurisdiction of the County (Table 1). One was characterized as active, two idle, nine either closed with no intent to resume or certified closed and reclaimed, and one exempt per PRC Section 2207. The commodities produced include sand and gravel, with some dimension stone.



The LART report for the County, dated May 2012, noted that five of the 14 surface mining operations were visited. Notably, LART reported that the County 1) failed to issue a permit to mine (Deficiency No. 1), failed to inspect the surface mining operations within the County's jurisdiction since 2003 (Deficiency No. 2). Other deficiencies included inadequate financial assurances (Deficiency No. 3), and failure to take any enforcement actions (Deficiency No. 4).

Table 1
Summary of Surface Mining Operations situated in the County of Colusa

Surface Mine Name	Mine Identification Number	Operator	Surface Mine Status	Last Annual Report Submittal (year)
Thompson Quarry	CA Mine ID#91-06-0001	Teichert Aggregates	Closed; certified reclaimed	2003
Arbuckle Rock Products	CA Mine ID#91-06-0002	Arbuckle Rock Products	Closed – No intent to resume; certified reclaimed	1993
Sulfur Creek Project	CA Mine ID#91-06-0003	Cecil Petry	Exempt	1991
Crownover-Twohey	CA Mine ID#91-06-0004	Department of Public Works	Closed; certified reclaimed	2000
Sand Creek	CA Mine ID#91-06-0005	Department of Public Works	Closed; certified reclaimed	1994
Princeton Sand and Gravel	CA Mine ID#91-06-0006	Michael Polito	Closed; certified reclaimed	1992
Salt Creek Bar	CA Mine ID#91-06-0007	English Transportation, Inc.	Closed; certified reclaimed	1995
Nobriga	CA Mine ID#91-06-0008	Colusa County Department of Public Works	Closed; certified reclaimed	1994
Gould Road Quarry	CA Mine ID#91-06-0009	CJ Enterprise	Closed – no intent to resume; reclamation in progress	2010
O'Sullivan Ranch Pit	CA Mine ID#91-06-0010	Clearlake Redi-Mix, Inc.	Active	2010
Salt Creel	CA Mine ID#91-06-0011	Alsco, Inc.	Closed – No intent to resume; certified reclaimed	1998
Brownstone Quarry	CA Mine ID#91-06-0012	Brownstone Quarry	Idle	2010
Peterson Farms at Cortina Road	CA Mine ID#91-06-0014	Colusa County Department of Public Works	Idle	2010
Lovelady Ranch and Little Stoney Mine	CA Mine ID#91-06-0015	Lovelady Ranch	Active	2010

County of Colusa Response to the 45-Day Notice to Correct Deficiencies:

The six categories of violations listed in PRC Section 2774.4(a) under which the SMGB may find a lead agency needs to take corrective actions:

Category [1] - A lead agency has approved reclamation plans or financial assurances which are not consistent with SMARA;

Category [2] - A lead agency has failed to inspect or cause the inspection of surface mining operations as required by SMARA;

Category [3] - A lead agency has failed to seek forfeiture of financial assurances and to carry out reclamation of surface mining operations as required by SMARA;

Category [4] - A lead agency has failed to take appropriate enforcement actions as required by SMARA;

Category [5] - A lead agency has intentionally misrepresented the results of inspections required under SMARA;

Category [6] - A lead agency has failed to submit information to the Department of Conservation as required by SMARA.

The following specific deficiencies in the County's administration of SMARA are identified with respect to these surface mines within the County's jurisdiction:

Deficiency 1: The County, in regards to issuance of permits and approval of reclamation plans and amended reclamation plans, has either administered such actions incorrectly, or such actions were not undertaken by the County (Category 1 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2774(b) and 2774.1(a)). Notably, Interim Management Plans (IMPs) were not requested for three surface mining operations:

- Gould Road Quarry (CA Mine ID #91-06-0009)
- Brownstone Quarry (CA Mine ID #91-06-0012)
- Peterson Farms at Cortina Road (CA Mine ID #91-06-0014)

The County also failed to request an amended reclamation plan for the Brownstone Quarry (CA Mine ID #91-06-0012).

Pursuant to PRC Section 2773.1(a)(3), SMARA requires that the financial assurance cost estimate (FACE) for each surface mining operation be reviewed and adjusted annually, as appropriate. Three surface mining operations were noted as having out-of-date financial assurances. Due to the absence of adequate inspection reports, financial assurances for the following surface mining operations remain questionable.

- Gould Road Quarry (CA Mine ID #91-06-0009)
- O'Sullivan Ranch Pit (CA Mine ID #91-06-0010)
- Brownstone Quarry (CA Mine ID #91-06-0012)
- Peterson Farms at Cortina Road (CA Mine ID #91-06-0014)
- Lovelady Mine (CA Mine ID #91-06-0015)

Analysis based on County's Response: The County has adequately addressed all issues associated with the Gould Road Quarry and Peterson Farms. Both operations are now considered reclaimed by the County and OMR, and the financial assurances can be released. A revised financial assurance cost estimate has been provided to OMR for the Lovelady Mine.

However, no adjusted financial assurance has been requested by the County from the operator for the O'Sullivan Ranch Pit or Brownstone Quarry. This deficiency remains outstanding for these two operations.

Deficiency 2: The County has failed to inspect or cause the inspection of all surface mining operations within their jurisdiction as required by SMARA since 2003.

Inspection reports must make reference to any reclamation or performance requirements, as set forth in the approved reclamation plans, or permit requirements such as Conditions of Approval. Such inspection reports must also include any quantification of site conditions, where applicable. SMGB regulations (CCR Section 3504.5(f)) state that "*Inspections may include, but shall not be limited to the following: the operation's horizontal and vertical dimensions; volumes of materials stored on the site; slope angles of stock piles, waste piles and quarry walls; potential geological hazards; equipment and other facilities; sample of materials; photographic or other electronic images of the operation; any measurements or observations deemed necessary by the inspector or the lead agency to ensure the operation is in compliance with Public Resources Code Chapter 9.*" Such information must be provided in the inspection reports.



Analysis based on County's Response: The County inspected all surface mining operations within its jurisdiction on August 31, 2012. Inspection reports provided remain inadequate. Such reports continue to contain only the minimal of information, with no reference to reclamation standards set forth in the approved reclamation plan and permit conditions, and whether the financial assurance is adequate or not. For example, the inspection report for the Brownstone Quarry notes no violations in Section VII of the Surface Mining Inspection Report dated August 31, 2012, and notes only one violation under Section IX, with no assessment of the adequacy of the financial assurance. However, several violations exist for this site which is now abandoned. Four are noted under Section VII for the O'Sullivan Ranch Pit but only one in Section IX. The County has indicated that it plans to participate in a scheduled Inspection Workshop to be held by OMR.

Deficiency 3: The County failed to enforce and seek forfeiture of the financial assurances for one surface mining operation, Brownstone Quarry (CA Mine ID #91-06-0012; referred to as the O'Sullivan Ranch Pit in the Notice), upon its abandonment by the operator, and the County has failed to act in a timely or appropriate manner (Category 3 violation pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2773.1(b)).

Analysis based on County's Response: The County agrees that the site is abandoned and failed to enforce and seek forfeiture of the financial assurance for the Brownstone Quarry. Since the operator maintains an intent to resume mining, an IMP is being pursued. The approach being taken by the County is deemed appropriate. This deficiency has been adequately addressed, notwithstanding the issue of adequacy of the adjusted financial assurance.

Deficiency 4: The County failed to take appropriate enforcement actions as required by SMARA. Despite numerous violations observed by OMR staff during conduct of site visits to five specific surface mining operations, the County 1) has not fulfilled its responsibilities and obligations as a SMARA lead agency, and 2) has not demonstrated an ability to administer its SMARA program in an appropriate manner consistent with the intent of SMARA and the SMGB's regulations. No Notice of Violation or subsequent Order-to-Comply, has ever been issued by the County to a surface mine operation within its jurisdiction (Category 4 violations pursuant to PRC Section 2774.4; deficiency pursuant to PRC Section 2770(h)(6)).

Analysis based on County's Response: The County states its intent and commitment to fulfill its responsibilities and obligations as a SMARA lead agency.

EXECUTIVE OFFICER'S RECOMMENDATION: The Executive Officer has visited certain surface mining operations within the jurisdiction of the County on June 20, 2012, and has reviewed the overall status of the SMARA program in the County, and the County's response to the Notice. The status of adjusted financial assurances for the O'Sullivan Ranch Pit and Brownstone Quarry remain uncertain, and completeness of inspection reports remains inadequate (Deficiencies No. 1 and 2).

Assuming that the County invest in adequate training (i.e., attending OMR's Inspection Workshop), and clarifying whether the financial assurances for the O'Sullivan Ranch Pit or Brownstone Quarry are adequate, the Executive Officer does not recommend assumption. The Executive Officer does recommend that the SMGB request that the County report back within six months to ensure these two items have been addressed. Furthermore, the Executive Officer recommends that the SMGB request copies of the next series of inspection reports once completed by the County to be forwarded to the SMGB for review.

SUGGESTED MOTION LANGUAGE: The SMGB may consider the following motion language:

[Should the SMGB determine that the County is fulfilling its responsibilities and obligations as a lead agency pursuant to SMARA, and that no deficiencies and violations exist, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County of Colusa is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, and that the Board not consider issuance of a 45-Day Notice of Deficiencies.

[or]

[Should the SMGB determine that the County is making significant progress, but certain deficiencies and violations remain uncorrected, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, find that the County of Colusa is making a good faith effort in fulfilling its responsibilities and obligations as a lead agency under SMARA, but note that significant deficiencies persist, and direct the Executive Officer to conduct a thorough review of current mine inspection reports for all surface mine sites within the jurisdiction of the County, and conduct on-site visits, as appropriate and deemed necessary. Upon completion, the Executive Officer will report back to the SMGB, and the SMGB can consider issuance of a 45-Day Notice of Deficiencies, if deemed necessary.

[or]

[Should the SMGB determine that deficiencies and violations remain uncorrected and the County is failing to make progress, the following motion may be considered.]

Mr. Chairman, I move that the SMGB, in light of the evidence presented before the Board today and contained in the Executive Officer's Report, direct the Executive Officer to issue a 45-Day Notice to Correct Deficiencies to County of Colusa pursuant to Public Resources Code Sections 2774.4(a) and (c).

Respectfully submitted:



Stephen M. Testa
Executive Officer

Exhibit A

LART Report on the County of Colusa

